

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

**Jerry W. Baze and
Peggy L. Baze,**

Plaintiffs,

v.

Case No. 04-2180-JWL

**City of Frontenac, Kansas; James
Kennedy; Tom Restivo; Paul Mendicki;
Chuck Clinton; Terry Moody; Charlie
Quenoy; John Macary; Linda Grilz; and
Dan Briwell,**

Defendants.

MEMORANDUM & ORDER

Plaintiffs filed this section 1983 suit against the City of Frontenac and its city council members challenging the constitutionality of a zoning ordinance restricting the location of single-wide mobile homes within the City of Frontenac. This matter is presently before the court on the individual defendants' motion to dismiss plaintiffs' complaint (doc. #19). As explained below, the motion is granted.

As an initial matter, the individual defendants move to dismiss plaintiffs' complaint to the extent plaintiffs purport to assert claims against these defendants in their official capacities as such claims would be redundant of plaintiffs' claims against the City. As this court has recognized on numerous occasions, when a municipality is sued along with the municipal officers in their official capacities, the suit against the officers is redundant and should be dismissed. *See, e.g., Hogan v. City of Independence, Kansas*, 2003 WL 21685907, at *1 n.1 (D. Kan. July 11, 2003);

Sims v. Unified Government of Wyandotte County/Kansas City, Kansas, 120 F. Supp. 2d 938, 944-45 (D. Kan. 2000) (collecting cases). Thus, to the extent plaintiffs are attempting to bring claims against the individual defendants in their official capacities, the court dismisses the claims.

To the extent plaintiffs assert claims against the individual defendants in their individual capacities, defendants assert that they are entitled to absolute legislative immunity, as plaintiffs seek to hold defendants liable for their role in enacting the zoning ordinance described in the complaint. The court agrees. The principle of legislative immunity for legislators has been long established. *See Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 405 (1979) (regional legislators); *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951) (state legislators); *Kilbourn v. Thompson*, 103 U.S. 168, 202-04 (1880) (interpreting federal Speech and Debate Clause to provide immunity to members of Congress). In *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998), the Supreme Court held that, like their federal, state and regional counterparts, local legislators are entitled to absolute immunity from section 1983 liability for their legislative activities. *See Kamplain v. Curry County Board of Comm'rs*, 159 F.3d 1248, 1250-51 (10th Cir. 1998).

While plaintiffs acknowledge the doctrine of legislative immunity, they assert that such immunity attaches only if the legislators are engaged in "legitimate legislative activities." According to plaintiffs, the individual defendants, by enacting an unconstitutional ordinance, were clearly not engaged in "legitimate" legislative activities and, thus, are not entitled to immunity. The court rejects this argument. While the Supreme Court recognized in *Bogan* that "absolute

legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity,” *see Bogan*, 523 U.S. at 54 (internal quotations omitted), the term “legitimate” refers to whether the challenged conduct can be considered “legislative” in nature as opposed to, for example, administrative or executive in nature. *See, e.g., Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503 (1975) (in determining whether particular activities fall within the “legitimate legislative sphere” for purposes of analyzing immunity of members of Congress, court looks to see whether the activities took place “in a session of the House by one of its members in relation to the business before it”).

Indeed, in *Bogan*, the First Circuit Court of Appeals had held that the city council members were not engaged in legitimate legislative activity when they adopted the particular ordinance that eliminated the plaintiff’s position because they devised the ordinance—an ordinance that was specifically targeted at the plaintiff—in retaliation for her engaging in constitutionally protected speech. *See* 523 U.S. at 54. The Supreme Court reversed the First Circuit, emphasizing that “[w]hether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.” *See id.* The Court then easily concluded that the city council members’ acts, “stripped of all considerations of intent and motive,” were “quintessentially legislative.” *See id.* at 55.

Here, plaintiffs allege that the city council members enacted the particular ordinance with the intent to force plaintiffs to sell their property and that the ordinance is otherwise unconstitutional. While plaintiffs may ultimately prevail against the City, the substance of the ordinance itself (which plaintiffs have attached to their complaint) bears all the hallmarks of

traditional legislation and the city council members, in drafting and passing the ordinance, certainly governed “in a field where legislators traditionally have power to act.” *See id.* Thus, the city council members activities were undoubtedly legislative and the individual defendants are immune from suit. *See id.*

IT IS THEREFORE ORDERED BY THE COURT THAT the individual defendants’ motion to dismiss plaintiffs’ complaint (doc. #19) is granted and plaintiffs’ complaint as to the individual defendants is dismissed with prejudice.

IT IS SO ORDERED this 16th day of September, 2004.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge